

United States District Court
for the
Southern District of New York
Related Case Statement

Full Caption of Later Filed Case:

IRVING H. PICARD, Trustee for the
Liquidation of the Bernard L. Madoff
Investment Securities LLC

Plaintiff

vs.

DELTA NATIONAL BANK AND TRUST
COMPANY

Defendant

Case Number

Bankruptcy Court Adv. Pro. No. 11-02551

Full Caption of Earlier Filed Case:

(including in bankruptcy appeals the relevant adversary proceeding)

IRVING H. PICARD, Trustee for the
Liquidation of the Bernard L. Madoff
Investment Securities LLC

Plaintiff

vs.

Multi-Strategy Fund Ltd;
Banque Syz & Co., SA;
Bordier & Cie;
Banque Cantonale Vaudoise;
Lloyds TSB Bank PLC;
Barclays Bank (Suisse) S.A. et al

Defendant

Case Number

22-cv-6502-JSR (Adv. Pro. No. 12-01205);
22-cv-6512-JSR (Adv. Pro. No. 12-02149);
22-cv-7195-JSR (Adv. Pro. No. 12-01695);
22-cv-7189-JSR (Adv. Pro. No. 12-01694);
22-cv-7173-JSR (Adv. Pro. No. 12-01207);
22-cv-7372-JSR (Adv. Pro. No. 12-02569)

Status of Earlier Filed Case:

☐

Closed

(If so, set forth the procedure which resulted in closure, e.g., voluntary dismissal, settlement, court decision. Also, state whether there is an appeal pending.)

☒

Open

(If so, set forth procedural status and summarize any court rulings.)

There are several related open cases presenting motions for leave to appeal from orders of the Bankruptcy Court filed by other defendants in adversary proceedings brought by Irving Picard as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("Trustee"): (1) Multi-Strategy Fund Ltd. (22-cv-6502); (2) Banque Syz & Co. SA (22-cv-6512); (3) Bordier & Cie (22-cv-7195); (4) Banque Cantonale Vaudoise (22-cv-7189); (5) Lloyds TSB Bank PLC (22-cv-7173); and (6) Barclays Bank (Suisse) S.A. et al (22-cv-7372). These cases present overlapping facts and legal arguments to this appeal. Each has been assigned to Judge Rakoff.

There is also a closed related case, SIPC v. Bernard L. Madoff Inv. Sec. LLC (12-mc-115), in which Judge Rakoff withdrew the reference to the Bankruptcy Court in over 100 related adversary proceedings brought by the Trustee seeking to recover alleged initial transfers from customers of BLMIS and/or alleged subsequent transfers to investors in customers of BLMIS. In 2013, Judge Rakoff issued a decision in No. 12-mc-115, 2013 WL 1609154 (S.D.N.Y. Apr. 15, 2013) (Rakoff, J.) ("Cohmad"), instructing the Bankruptcy Court concerning the application of Bankruptcy Code § 546(e) to the initial transfers at issue. This appeal, like the related open cases noted above, directly relates to the interpretations of Section § 546(e) as set forth in Cohmad.

Explain in detail the reasons for your position that the newly filed case is related to the earlier filed case.

The newly filed case is an appeal from an August 23, 2022 Order of the Bankruptcy Court in one of the Madoff adversary proceedings filed by the Trustee. This appeal argues that in the August 23, 2022 Order, the Bankruptcy Court misapplied this Court's Cohmad decision. The questions presented are:

1. Did the Bankruptcy Court err in interpreting this Court's opinion in Cohmad to preclude a subsequent transferee defendant from asserting a defense under Section 546(e) on the basis that the initial transferee allegedly had knowledge of BLMIS' fraud, even where there are no allegations that the subsequent transferee defendant had such knowledge?
2. Did the Bankruptcy Court err by failing to apply the holding in Cohmad that Section 546(e) applies to securities contracts between an initial transferee investment fund and the defendant invoking the safe harbor, contracts to which BLMIS was not a party, where the Trustee alleged that the initial transferee investment fund withdrew money from BLMIS to fulfill its payment obligations to the defendant, which was redeeming shares in the initial transferee investment fund?

This appeal requires a district court judge to interpret Judge Rakoff's decision in Cohmad. As a result, Judge Rakoff should be assigned to this adversary proceeding because he is best positioned to clarify the principles he set forth in Cohmad.

This appeal should also be heard by the same district court judge assigned to the appeals filed in August 2022 by Banque Syz & Co. SA (22-cv-6512); Multi-Strategy Fund Ltd. (22-cv-6502); Bordier & Cie (22-cv-7195); Banque Cantonale Vaudoise (22-cv-7189); Lloyds TSB Bank PLC (22-cv-7173); and Barclays Bank (Suisse) S.A. and related defendants (22-cv-7372). Like this appeal, each of these appeals asks the district court to clarify the principles set forth in Cohmad. Each has been assigned to Judge Rakoff.

Signature: /s/ James L. Bromley Date: 09/06/2022

Sullivan & Cromwell LLP

Firm: _____